

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 7298

BILL NUMBER: SB 215

NOTE PREPARED: Feb 22, 2011

BILL AMENDED: Feb 21, 2011

SUBJECT: Forfeiture.

FIRST AUTHOR: Sen. Bray

FIRST SPONSOR: Rep. Foley

BILL STATUS: As Passed Senate

**FUNDS AFFECTED: GENERAL
 X DEDICATED
 FEDERAL**

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

- A. It provides that, in a forfeiture proceeding, 15% of the proceeds shall be provided to the Common School Fund, and 85% of the proceeds shall be transferred to an account for distribution to law enforcement agencies participating in the seizure.
- B. It specifies that money or the proceeds of seized property placed in a county asset forfeiture account may be only disbursed by action of the county legislative body under a claim submitted by a law enforcement agency or prosecuting attorney, and must be disbursed pursuant to an interlocal agreement, if applicable.
- C. It permits a prosecuting attorney to retain an attorney to bring a forfeiture action only if the Attorney General reviews the compensation agreement between the prosecuting attorney and the retained attorney, and requires that the compensation agreement with the attorney be capped at: (1) 33 1/3% of the first \$10,000; (2) 25% of the amount between \$10,000 and \$100,000; and (3) 20% of the amount that is at least \$100,000; unless a court finds that the forfeiture action is unusually complex.
- D. It requires a court to notify the Indiana Criminal Justice Institute of the amount and manner of a forfeiture distribution.
- E. It provides that a deputy prosecuting attorney who engages in a forfeiture action for the prosecuting attorney's office may not receive a contingency fee.

Effective Date: July 1, 2011.

Explanation of State Expenditures: .

Explanation of State Revenues: (Revised) The bill provides that 85% of forfeitures are to be deposited into

the State Police Asset Forfeiture Fund if the property was seized by the State Police Department, or the local law enforcement forfeiture fund if the unit has established a local law enforcement forfeiture fund. The balance, or 15%, is to be deposited into the Common School Fund.

The bill will have an indeterminable impact on the Common School Fund. LSA found limited information on asset seizures and the value of these assets to conclude whether the Common School Fund would receive more money from these asset forfeitures. As background, the State Auditor's data system reports that the Common School Fund received \$102,472 from controlled substance seizures in FY 2010. The amount retained by local law enforcement agencies was not known.

LSA used 13 forfeiture cases that were reported by the Wayne County Sheriff to the State Treasurer and the amount of money that was divided between the local law enforcement agencies and prosecuting attorney and the Common School Fund. The following table shows the reported distributions for each case and what the distribution would be under this proposed formula. For these selected cases, more money from asset seizures would stay at the local level under this proposed formula than is currently being recovered now.

	Current Law		Proposed Changes		
Case No.	Law Enforcement Costs	Common School Fund	Law Enforcement Costs	Common School Fund	Total Value of Asset
0712-MI-036	\$2,145.41	\$13,820.59	\$13,571.10	\$2,394.90	\$15,966.00
0806-MI-013	\$343.08	\$5,276.92	\$4,777.00	\$843.00	\$5,620.00
0908-MI-013	\$1,345.86	\$2,645.14	\$3,392.35	\$598.65	\$3,991.00
0806-MI-012	\$921.07	\$2,079.93	\$2,550.85	\$450.15	\$3,001.00
0610-MI-021	\$425.53	\$2,099.31	\$2,146.11	\$378.73	\$2,524.84
0704-MI-008	\$1,982.60	\$340.24	\$1,974.41	\$348.43	\$2,322.84
0606-MI-011	\$628.89	\$1,632.31	\$1,922.02	\$339.18	\$2,261.20
0804-MI-022	\$1,132.44	\$878.60	\$1,709.38	\$301.66	\$2,011.04
0612-MI-024	\$999.92	\$921.88	\$1,633.53	\$288.27	\$1,921.80
0811-MI-001	\$477.75	\$1,439.25	\$1,629.45	\$287.55	\$1,917.00
0811-MI-026	\$572.75	\$1,048.25	\$1,377.85	\$243.15	\$1,621.00
0704-MI-030	\$589.72	\$690.28	\$1,088.00	\$192.00	\$1,280.00
0611-MI-024	\$498.01	\$454.99	\$810.05	\$142.95	\$953.00
Totals	\$12,063.03	\$33,327.69	\$38,582.11	\$6,808.61	\$45,390.72

Explanation of Local Expenditures:

Explanation of Local Revenues: See *State Explanation of State Revenues*.

State Agencies Affected: Office of the State Treasurer; Criminal Justice Institute

Local Agencies Affected: Local law enforcement agencies; Prosecuting attorneys.

Information Sources: Paul Ogden, Attorney at Law; Steve Johnson, Prosecuting Attorneys Council; State

Treasurer.

Fiscal Analyst: Mark Goodpaster, 317-232-9852.